

OFFICE OF OPERATIONS

OPERATIONS NOTICE NO. 9

December 7, 2009

SUBJECT: PROPOSITION 69, DNA FINGERPRINT, UNSOLVED CRIME AND INNOCENCE PROTECTION ACT

EFFECTIVE: IMMEDIATELY

PURPOSE: The purpose of this Notice is to implement a provision of Proposition 69, titled *DNA Fingerprint, Unsolved Crime and Innocence Protection Act*. Effective January 1, 2009, law enforcement agencies became responsible for the collection of deoxyribonucleic acid (DNA) samples from all adult felony arrestees during the booking process. Proposition 69 provides for expungement procedures allowing qualified individuals to have their DNA sample destroyed and their searchable database profile removed from the Department of Justice data bank.

In any case where a person has been found factually innocent of an underlying offense, in accordance with California Penal Code Section 851.8, the person may petition the law enforcement agency having jurisdiction over the offense to provide the Criminal Identification and Information/State Identification Number (CII/SID), provided through a LiveScan transaction. The Criminal Identification and Information/State Identification Number is required for the completion of the *Petition for Expungement of DNA Profiles and Samples* and the *Order for Expungement of DNA Profiles and Samples* forms. This Notice details the Department's responsibilities in the expungement procedures in compliance with Proposition 69.

PROCEDURE: Department personnel shall comply with the responsibilities pursuant to Proposition 69 by processing LiveScan transactions at jail facilities during normal business hours. Persons seeking LiveScan transactions at Area stations without a jail facility, or at a jail facility on holidays, weekends, and off-hours shall be directed to a jail facility during normal business hours.

DETENTION OFFICER'S RESPONSIBILITIES. A person seeking expungement is required to have a LiveScan identification transaction so as to provide his/her CII/SID number on the expungement petition and order. Detention officers shall:

- * Request the petitioner to present his/her driver license or other government identification;
- * Compare the identification to the "Petitioner's Information" box on the petition and order;

December 7, 2009

- * Conduct a LiveScan transaction of the petitioner, using the "Petitioner's Information" box;
- * Advise the petitioner that they will have to wait while identification is being verified through Records and Identification Division;
- * Once the LiveScan response is returned, insert the CII/SID number on both the petition and order in the "Petitioner's Information" box, to the right of "CII:", and;
- * Insert their name and serial number on both the petition and order in the "Petitioner's Information" box to the left of "CII:".

Note: The petitioner provides the *Petition for Expungement of DNA Profiles and Samples* and the *Order for Expungement of DNA Profiles and Samples* forms to the detention officer for the LiveScan transaction. A sample copy of the petition and order are attached to this Notice for reference.

Any questions regarding this Notice should be directed to the Investigative Analysis Section, Detective Bureau, at (213) 486-7010.



EARL C. PAYSINGER, Assistant Chief
Director, Office of Operations

Attachments

DISTRIBUTION "D"

SAMPLE

CR-185/JV-796

ATTORNEY OR PETITIONER WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PETITION FOR EXPUNGEMENT OF DNA PROFILES AND SAMPLES (Pen. Code, § 299)		Court or Arresting Agency Case Number: _____
NAME: _____ I.M. JAILER #A123 DRIVER'S LICENSE #: _____ SSN # (Last four digits only): _____ DATE OF BIRTH: _____	PETITIONER'S INFORMATION ← CII/SID NUMBER	

PETITION

- Petitioner has been included in the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program as required by Penal Code section 296.
- No past or present offense or pending charge qualifies petitioner for inclusion in the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program, nor is there any legal basis for the continued retention of petitioner's specimen, sample, or searchable profile.
- Petitioner requests that the California Department of Justice destroy petitioner's DNA sample or specimen, or both, and expunge petitioner's searchable DNA database profile as provided for in Penal Code section 299 on the following grounds (check one):
 - No qualifying charges were filed within the applicable period allowed by law following petitioner's arrest.
 - The qualifying charges were dismissed before adjudication.
 - The qualifying conviction has been reversed and the case dismissed.
 - Petitioner has been found factually innocent of the qualifying offense under Penal Code section 851.8 or Welfare and Institutions Code section 781.5.
 - Petitioner was acquitted or found not guilty of the qualifying offense.
 - Petitioner's previously sustained delinquency petition alleging an offense that would be a felony if committed by an adult has been reversed and dismissed.
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____ at _____, California.
(DATE) (CITY)

(PETITIONER'S SIGNATURE)

(PETITIONER'S ADDRESS)

(CITY)

(STATE)

(ZIP CODE)

ADDITIONAL INSTRUCTIONS: Penal Code section 299(c)(1) requires petitioner to send a copy of this petition to the DNA Laboratory of the California Department of Justice, and the trial court and prosecuting attorney of the county where petitioner was arrested, convicted, adjudicated, or had the disposition rendered, and to provide the court with proof of service on all parties.

ATTORNEY OR PETITIONER WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
ORDER FOR EXPUNGEMENT OF DNA PROFILES AND SAMPLES (Pen. Code, § 299)		Court or Arresting Agency Case Number:
PETITIONER'S INFORMATION		
NAME:	I.M. JAILER #A123	
CI#:	← CII/SID NUMBER	
DRIVER'S LICENSE #:		
SSN # (Last four digits only):		
DATE OF BIRTH:		

ORDER

The court denies the petition.

The court grants the petition and orders that petitioner's DNA specimen and sample be destroyed and petitioner's searchable database profile be expunged from the California Department of Justice's DNA and Forensic Identification Database and Data Bank Program as required by Penal Code section 299. Additionally, the court finds (a) that petitioner has made the necessary showing at a noticed hearing, (b) no retrial or appeal of the qualifying case (if any) is pending, (c) at least 180 days have passed since petitioner notified the prosecuting attorney and the Department of Justice of petitioner's request for expungement, and (d) the court has not received an objection from the Department of Justice or the prosecuting attorney. (Pen. Code, § 299(c)(2).)

FOR COURT USE ONLY

Date: _____
(JUDICIAL OFFICER)

<p>ADDITIONAL INSTRUCTIONS:</p> <p>As required by Penal Code section 299(c)(2), the California Department of Justice must destroy petitioner's specimen and sample and expunge petitioner's searchable DNA database profile on receipt of this court order, which must also include the written petition for expungement, proof of written notice of the petition to the California Department of Justice and the prosecuting attorney, and one of the following:</p> <p>a. A certified copy of the court order reversing and dismissing the conviction or case; or</p> <p>b. A letter from the prosecuting attorney certifying that:</p> <ol style="list-style-type: none"> (1) no accusatory pleading has been filed; (2) the qualifying charges have been dismissed before adjudication; (3) petitioner has been found factually innocent; (4) petitioner has been found not guilty; (5) petitioner has been acquitted of the underlying offense; (6) the qualifying conviction has been reversed and the case dismissed; or (7) the qualifying sustained delinquency petition has been reversed and the case dismissed.
